

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EDWARD E. GATZ and DONALD D. GRAHAM, individually and on behalf of those similarly situated, and EDWARD E. GATZ and DONALD D. GRAHAM, derivatively on behalf of REGENCY AFFILIATES, INC.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 03-828-SLR
	)	
WILLIAM R. PONSOLDT, SR., STATESMAN GROUP, INC., WILLIAM R. PONSOLDT, JR., MARC H. BALDINGER, STEPHANIE CAREY, MARTIN J. CRAFTFEY, ROYALTY HOLDINGS LLC, ROYALTY MANAGEMENT INC., LAURENCE LEVY, and REGENCY AFFILIATES INC.,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Currently before the court is the expedited motion of defendants William R. Ponsoldt, Sr., William R. Ponsoldt, Jr., Marc H. Baldinger, Stephanie Carey and Martin J. Craffey (collectively the "Former Regency Directors") to terminate the prejudgment attachment of compensation owed to William R. Ponsoldt, Sr., former President and CEO of Regency Affiliates, Inc.<sup>1</sup> (D.I. 286) This motion arises in the context of a civil

---

<sup>1</sup>There are four other defendants which have not joined in this motion, and do not oppose the motion. They include the

action brought under the federal racketeering laws by the plaintiffs, Edward E. Gatz and Donald E. Graham, but individually and derivatively on behalf of Regency Affiliates, Inc. This court has jurisdiction over the action pursuant to 28 U.S.C. § 1331.

## **II. BACKGROUND**

The court will not at this time attempt to review the entire procedural history of this case. For purposes of deciding this motion, the operative facts are as follows. The original complaint was filed in the United States District Court for the District of Nebraska on May 5, 2002. (D.I. 1) On October 25, 2002, the Nebraska court denied plaintiffs' first motion for a preliminary injunction and denied, without prejudice, an amended motion for a preliminary injunction and temporary restraining order ("TRO"). (D.I. 39, 132) In April 2003, plaintiffs filed a renewed motion for preliminary injunction and a TRO. (D.I. 218) On April 21, 2003, following a motion hearing, the Nebraska court denied plaintiffs' request for a TRO. (D.I. 226) On May 9, 2003, the Nebraska court limited discovery to only those issues pertaining to the motion for a preliminary injunction and pending motions to dismiss. (D.I. 238) On June 11, 2003, an

---

Delaware corporation at issue Regency Affiliates, Inc, and a group of shareholders consisting of Royalty Holdings, L.L.C., Royalty Management, Inc., and Laurence Levy (collectively the "Royalty Shareholders").

unreported teleconference was held to resolve disputed discovery and scheduling issues. The current issue before this court arises from an order issued by the Nebraska court following that teleconference. (D.I. 258) That order states:

1. The depositions of Mr. Gatz and Mr. Graham will take place on June 19-20, 2003, in Nebraska.
2. The telephone deposition of Ms. Carey shall take place on June 30, 2003.
3. The depositions of Mr. Ponsoldt, Sr., and Mr. Baldinger shall take place on July 1-2, 2003, in Florida, and the deposition deadline is extended accordingly.
4. If, as a result of the monetization, any party contemplates a payment to Mr. Ponsoldt, Sr., that payment shall be made to the trust account of Knudsen, Berkheimer, Richardson & Endacott, L.L.P., and there held until further order of this court.
5. The preliminary injunction hearing is scheduled for Monday, July 21, 2003, between the hours of 8:30 a.m. and 6:00 p.m. The deposition of a party or a representative may be used without a showing of unavailability.

(Id.) In paragraph four of the June 11 order, the district court inexplicably imposes what is, for all intents and purposes, an injunction. Plaintiffs concede that it is, in fact, a preliminary injunction and that it was intended to "stay in place until a preliminary injunction hearing." (D.I. 317 at 21-22)

On June 7, 2003, two weeks prior to the scheduled preliminary injunction hearing, the Nebraska court entered an order transferring the matter to this court on the basis of lack of personal jurisdiction over the parties and improper venue. (D.I. 277) Although briefing was complete on the defendants'

motions to dismiss and for the plaintiffs' motion for a preliminary injunction, the Nebraska court denied all those motions as moot via transfer but with leave to refile them without prejudice. (D.I. 277) The court also denied without prejudice defendants' motions for reconsideration or clarification of the June 11 Order. (D.I. 279)

### **III. DISCUSSION**

The Former Regency Directors contend that the injunction instituted by the Nebraska court in paragraph four of the June 11 Order was procedurally improper and must be dissolved. This court agrees.

A district court's authority to grant preliminary injunctive relief is governed by the procedures set forth in Fed. R. Civ. P. 65. See Mayflower Indus. v. Thord. Corp., 182 F.2d 800 (3d Cir. 1950). Pursuant to that rule, a district court's pre-judgment equitable powers may only be exercised after notice to the defendant and opportunity to be heard. See Sims v. Greene, 161 F.2d 87, 88 (3d Cir. 1947). The plaintiffs have failed to produce evidence that this requirement was met with respect to the issuance of the June 11 Order. Moreover, Fed. R. Civ. P. 65(d) requires that "[e]very order granting an injunction shall set forth the reasons for its issuance." The June 11 Order provides no explanation or rationale by which this court can determine the intent of the injunction.

A court may, where immediate and irreparable harm is demonstrated, depart from the procedural requirements of Rule 65 (a), and issue a temporary restraining order. Fed. R. Civ. P. 65(b). However, such an order is, by its nature, only temporary and in most circumstances must expire within ten days. Id. It has now been over 120 days since the order was issued, hardly a temporary measure.

The Former Regency Directors contend that the purpose of the Nebraska court was to secure Ponsoldt, Sr.'s participation in the proceedings through the preliminary injunction hearing. (D.I. 301 at 8) However, the Nebraska court's June 11 Order provides no intelligible means by which this court can divine such an intent. Moreover, as plaintiffs have now deposed Ponsoldt, Sr., if that was the Nebraska court's intent, it has been fulfilled.

Consequently, if the injunction was intended as a TRO pending a proper and full hearing on a preliminary injunction, it has exceeded its life. If the injunction was intended to be a permanent preliminary injunction, it fails procedurally as it provides no explanation for its issuance.<sup>2</sup>

#### **IV. CONCLUSION**

For the reasons set forth above at Wilmington this 7<sup>th</sup> day

---

<sup>2</sup>The court is particularly persuaded by the fact that the Nebraska court specifically denied injunctive relief twice prior to the June 11 Order. Consequently, if the Nebraska court had intended for this to be of greater duration than a normal TRO, this court believes it should and would have made that clear.

of November 2003;

IT IS ORDERED that the Former Regency Directors' expedited motion to terminate prejudgment attachment is **granted** (D.I. 286) and that any payment of past due salary made to William R. Ponsoldt, Sr. by Regency Affiliates, Inc., shall be paid directly to Mr. Ponsoldt, Sr. and not be paid into the trust account of Knudsen, Berkheimer & Endacott, L.L.P.

Sue L. Robinson  
United States District Judge